MOTION FILED
JUL 6 1979

No. 78-1335

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

VILLAGE OF SCHAUMBURG, *et al.*,
Petitioners,

v.

CITIZENS FOR A BETTER ENVIRONMENT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* ON BEHALF OF THE COALITION OF NATIONAL VOLUNTARY ORGANIZATIONS AND THE FOLLOWING MEMBERS INDIVIDUALLY: AMERICAN HEART ASSOCIATION; AMERICAN RED CROSS; ASSOCIATION OF GOVERNING BOARDS OF UNIVERSITIES AND COLLEGES; COUNCIL FOR FINANCIAL AID TO EDUCATION; GIRL SCOUTS OF THE USA; ET AL.*

ADAM YARMOLINSKY
STEPHEN T. OWEN
KOMINERS, FORT, SCHLEFER & BOYER
1776 F Street, N.W.
Washington, D.C. 20006
202-467-5900

Attorneys for the Amici Curiae

July 1979

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

*THE AMICI CURIAE

The Coalition of National Voluntary Organizations on its own behalf, and the following member organizations individually: American Heart Association; American Red Cross; Association of Governing Boards of Universities and Colleges; Council for Financial Aid to Education; Girl Scouts of the USA; Lutheran Council in the USA; Mental Health Association; National Institute of Independent Colleges and Universities; National Board of Young Men's Christian Associations; National Conference of Catholic Associations; National Council of Churches of Christ in the U.S.A.; National Council on the Aging, Inc.; National Council on Crime and Delinquency; National Health Council, Inc., and the following member voluntary health agencies; American Cancer Society, American Diabetes Association, American Lung Association, American Social Health Association, Arthritis Foundation, Asthma-Allergy Foundation of America, Committee to Combat Huntington's Disease, Cystic Fibrosis Foundation, Epilepsy Foundation of America, National Easter Seal Society for Crippled Children and Adults, National Foundation—March of Dimes, National Hemophilia Foundation, National Kidney Foundation, National Multiple Sclerosis Society, National Society to Prevent Blindness, Muscular Dystrophy Association, and United Cerebral Palsy Association; Planned Parenthood Federation of America, Inc.; and United Way of America.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1335

VILLAGE OF SCHAUMBURG, *et al.*,
Petitioners,

v.

CITIZENS FOR A BETTER ENVIRONMENT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

On behalf of The Coalition of National Voluntary Organizations and the following member organizations individually: American Heart Association; American Red Cross; Association of Governing Boards of Universities and Colleges; Council for Financial Aid to Education; Girl Scouts of the USA; Lutheran Council in the USA; Mental Health Association; National Institute of Independent Colleges and Universities; National Board of Young Men's Christian Associations; National Conference of Catholic Associations; National Council of Churches of Christ in the U.S.A.; National Council on

the Aging, Inc.; National Council on Crime and Delinquency; National Health Council, Inc., and the following member voluntary health agencies: American Cancer Society, American Diabetes Association, American Lung Association, American Social Health Association, Arthritis Foundation, Committee to Combat Huntington's Disease, Cystic Fibrosis Foundation, Epilepsy Foundation of America, National Easter Seal Society for Crippled Children and Adults, National Foundation—March of Dimes, National Kidney Foundation, National Multiple Sclerosis Society, National Society to Prevent Blindness, Muscular Dystrophy Association, and United Cerebral Palsy Association; Planned Parenthood Federation of America, Inc.; and United Way of America, leave is hereby requested to file the attached brief *amicus curiae* in the above-captioned action. The consent of the attorney for the respondents, for filing of the attached brief, has been obtained. The consent of the attorney for the petitioners Village of Schaumburg, *et al*,, was requested but refused.

The organizations requesting leave to file a brief *amicus curiae*, on their own behalf and on behalf of numerous other organizations with similar interests in this case, are major national voluntary organizations in the United States.

The direct and immediate interest of these organizations in this case arises from the fact that because they operate on a nationwide basis they are subject to a patchwork of state and local regulations governing charitable solicitation, of which the ordinance of the Village of Schaumburg, subject of the instant case, is a part.

Many of the organizations supporting the attached brief derive substantial portions of their revenues from door-to-door solicitations and similar direct contact solicitation activities. Hence the cumulative impact, nationwide, of laws, ordinances and regulations like the one

at issue here affects in significant ways the ability of such organizations to conduct effective national fund-raising campaigns. Indeed, as illustrated by this case, the impact of such ordinances may altogether preclude personal direct contact solicitation by a variety of organizations performing beneficial, and constitutionally protected, activities.

The particular interest of these organizations in submitting a separate statement of position through a brief *amicus curiae* is that, while the respondent herein represents one type of organization subject to the Schaumburg ordinance, the organizations submitting the attached brief represent the views of a broad spectrum of voluntary organizations potentially subject to that ordinance and similar laws. These organizations range from those which, in the words of the court below, can be described as "the more traditional charitable organizations," through organizations engaged largely in public education, to organizations engaged extensively in attempts to influence legislation beyond the limits permitted by Sections 501 (h) and 4911 of the Internal Revenue Code of 1954, as amended, and subject to Section 501(c)(4) or 501(c)(6) of the Code, rather than (as respondents in the instant case), Section 501(c)(3).

Accordingly, the organizations supporting this brief request the opportunity to demonstrate the infirmities of the Schaumburg ordinance, and similar laws, as such laws impact upon a wider range of organizations than is represented by respondents. Moreover, the implications of the Schaumburg ordinance and similar enactments are broader than their impact on door-to-door solicitation, since comparable restrictions can and do impose significant limitations on other forms and techniques of fund-raising used by charitable organizations. "[I]n appraising a statute's inhibiting effect upon [First Amendment] rights, this Court has not hesitated to take into account possible applications of the statute in other

factual contexts besides that at bar." *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 432 (1963).

The brief which the *amici curiae* seek leave to file argues that the cumulative impact of Schaumburg-type ordinances on fund solicitation on a national scale, renders them unconstitutional.

In addition to requesting permission to file this brief, we also request permission to participate in oral argument.

ADAM YARMOLINSKY
STEPHEN T. OWEN
KOMINERS, FORT, SCHLEFER & BOYER
1776 F Street, N.W.
Washington, D.C. 20006
202-467-5900

Attorneys for the Amici Curiae

July 1979

TABLE OF CONTENTS

	Page
INTRODUCTION	3
INTEREST OF THE AMICI CURIAE	4
SUMMARY OF ARGUMENT	5
ARGUMENT	6
1. PRIVATE NON-PROFIT GROUPS AS A VEHICLE FOR THE EXERCISE OF FIRST AMENDMENT FREEDOMS HAVE INCREASINGLY BEEN THREATENED BY THE DIFFICULTY OF SECURING A BROAD BASE OF PRIVATE FINANCIAL SUPPORT	6
2. DOOR-TO-DOOR SOLICITATION IS AN ESSENTIAL ELEMENT IN THE FUND RAISING EFFORTS OF NATIONAL ORGANIZATIONS	10
3. AN ARBITRARY LIMIT ON SOLICITATION COSTS IMPOSES UNREASONABLE BURDENS ON THE EXERCISE OF FIRST AMENDMENT FREEDOMS	13
4. THE REQUIREMENT THAT CHARITABLE ORGANIZATIONS SUBMIT PROOF OF EXEMPT STATUS UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE UNREASONABLY EXCLUDES OTHER CHARITABLE ORGANIZATIONS FROM THE EXERCISE OF THEIR FIRST AMENDMENT RIGHTS AND DENIES THEM THE EQUAL PROTECTION OF THE LAWS	19
5. ADEQUATE MEANS ARE AVAILABLE AND IN GENERAL USE IN OTHER JURISDICTIONS TO ACCOMPLISH THE LEGITIMATE POLICE POWER OBJECTIVES OF THE ORDINANCE AT ISSUE	22
CONCLUSION	31
APPENDIX A	1a
APPENDIX B	4a

CITATIONS

Cases: Page

Bates v. *City of Little Rock*, 361 U.S. 516 (1960) .. 24
Bigelow v. *Commonwealth of Virginia*, 421 U.S. 809 (1975) 24
Cantwell v. *Connecticut*, 310 U.S. 296 (1940) 25, 26
Carolina Action v. *Pickard*, 465 F. Supp. 576 (W.D.N.C. 1979) 24, 25
Citizens for a Better Environment, Inc. v. *Nassau County*, 488 F.2d 1353 (2d Cir. 1973) 21
Citizens for a Better Environment v. *Schaumburg*, 590 F.2d 220 (7th Cir. 1978) ..... *passim*
Department of Employment v. *United States*, 385 U.S. 355 (1966) 4
Harper v. *Virginia State Board of Elections*, 383 U.S. 663 (1966) 20
Heritage Village Church v. *North Carolina*, No. 77CVS6460 (N.C. Ct. App. April 3, 1979) 24, 26
Hynes v. *Mayor of Oradell*, 425 U.S. 610 (1976) 19, 22, 23, 26
Lemon v. *Kurtzman*, 403 U.S. 602 (1971) 27
Lovell v. *Griffin*, 303 U.S. 444 (1938) 19, 22
Marsh v. *Alabama*, 326 U.S. 501 (1946) 19
Martin v. *Struthers*, 319 U.S. 141 (1943) 19
Murdock v. *Pennsylvania*, 319 U.S. 105 (1943) 25
N.A.A.C.P. v. *Button*, 371 U.S. 415 (1963) 5
National Foundation v. *City of Fort Worth*, 415 F.2d 41 (5th Cir., 1969), cert. denied, 396 U.S. 1040 (1970) 23
New York v. *Cathedral Academy*, 434 U.S. 125 (1977) 27
People v. *Police Hall of Fame, Inc.*, 60 Ill. App. 3d 331, 17 Ill. Dec. 519, 376 NE2d 665 (Ill. App. Ct., 1st Dist. 1978) 27
Schneider v. *Irvington*, 308 U.S. 147 (1939) 10, 19, 20, 22
Shapiro v. *Thompson*, 394 U.S. 618 (1969) 20
Sibron v. *New York*, 392 U.S. 40 (1968) 26
Skinner v. *Oklahoma*, 316 U.S. 535 (1942) 20
Thomas v. *Collins*, 323 U.S. 516 (1945) 19, 22, 23

CITATIONS—Continued

Page

Torres v. *Commonwealth of Puerto Rico*, 47 U.S. L.W. 4716 (June 18, 1979) 26
Trustees of Dartmouth College v. *Woodward*, 17 U.S. (4 Wheat.) 518 (1819) 10
Tucker v. *Texas*, 326 U.S. 517 (1946) 19
Valente v. *Larson*, Civ. 4-78-453 (D. Minn., 4th Div. May 3, 1979) 26
Walz v. *Tax Comm'n of the City of New York*, 397 U.S. 664 (1970) 27

Statutes and Regulations:

Ill. Ann. Stat. Ch. 23 (Smith-Hurd):

Sections 5101, *et seq.* 27
Section 5109(c) 27

Internal Revenue Code of 1954:

Section 501(c)(3) 19, 20
Section 501(c)(4) 20
Section 501(c)(6) 20

Legislative Materials:

Hearings on H.R. 41 before the Subcomm. on Postal Personnel and Modernization of the House Comm. on Post Office and Civil Service, 95th Cong., 1st Sess. (1977) 14, 16, 17, 18, 29
H.R. 1123, 94th Cong., 1st Sess. 28
H.R. 4698, 93rd Cong., 2d Sess. 28
H.R. 10922, 94th Cong., 2d Sess. 28
S. 1153, 93rd Cong., 2d Sess. 28

Miscellaneous:

Alexis De Tocqueville, DEMOCRACY IN AMERICA (J. Mayer & M. Lerner Ed. 1966) 6
American Association of Fundraising Counsel, GIVING USA—1979 ANNUAL REPORT (1979) 6

CITATIONS—Continued

Page

American Institute of Certified Public Accountants, ACCOUNTING PRINCIPLES AND REPORTING PRACTICES FOR CERTAIN NON-PROFIT ORGANIZATIONS (Draft 1978) 15

American Institute of Certified Public Accountants, AUDITS OF VOLUNTARY HEALTH AND WELFARE ORGANIZATIONS (1974) 15

Boyle & Jacobs, "Fund Raising Costs," PHILANTHROPY MONTHLY, April, 1979 15

Commission on Private Philanthropy and Public Need, REPORT—GIVING IN AMERICA—TOWARD A STRONGER VOLUNTARY SECTOR (U.S. Dep't of Treasury, 1975) 6, 7, 8, 14, 28

Morgan, Dye, & Hybels, "Results from Two National Surveys of Philanthropic Activity," I Research Papers Sponsored by the Commission on Private Philanthropy and Public Needs—History Trends and Current Magnitudes 157 (U.S. Dep't of the Treasury, 1977) 7, 8, 14

National Health Council, *et al.*, STANDARDS OF ACCOUNTING AND FINANCIAL REPORTING FOR VOLUNTARY HEALTH AND WELFARE AGENCIES (1974 Rev.) 15

National Health Council, VIEWPOINTS—STATE LEGISLATION REGULATING SOLICITATION OF FUNDS FROM THE PUBLIC (1976 Rev. Ed.) 14, 15, 28

Nelson, "Private Giving in the American Economy, 1960-1972", I Research Papers Sponsored by the Commission on Private Philanthropy and Public Needs—History, Trends and Current Magnitudes 115 (U.S. Dep't of the Treasury, 1977) 6, 9

Roistacher & Morgan, "Charitable Giving, Property Taxes, and Itemization on Federal Tax Returns, A Final Report from a National Survey," Institute for Social Research, University of Michigan (1974) 7, 8

CITATIONS—Continued

Page

Rudney, "The Scope of the Private Voluntary Charitable Sector", I Research Papers Sponsored by the Commission on Private Philanthropy and Public Needs—History, Trends and Current Magnitudes 135 (U.S. Dep't of the Treasury, 1977) 6

Smallwood & Levis, "The Realities of Fundraising Costs and Accountability," PHILANTHROPHY MONTHLY, September 1977) 13

THE PHILANTHROPY MONTHLY, SURVEY OF STATE LAWS REGULATING CHARITABLE SOLICITATION (Looseleaf, 1978 Rev.) 17, 26

United Way of America, ACCOUNTING & FINANCIAL REPORTING (1974) 15

Yarmolinsky & Fremont-Smith, "Judicial Remedies and Related Topics," in V Research Papers Sponsored by the Commission on Private Philanthropy and Public Needs—Regulation (U.S. Dep't of the Treasury, 1977) 28

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1335

VILLAGE OF SCHAUMBURG, *et al.*,
Petitioners,

v.

CITIZENS FOR A BETTER ENVIRONMENT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICUS CURIAE*

This brief *amicus curiae* is submitted by The Coalition of National Voluntary Organizations [1] and the following

[1] The Coalition of National Voluntary Organizations acts in this matter through its Board of Directors. It notes that some of its member organizations do not take positions on issues outside their immediate field of charity. The following are members of the Coalition: Agudath Israel of America; Alliance for Volunteerism; American Arts Alliance; American Assn. of Fund Raising Counsel, Inc.; American Assn. of Homes for the Aging; American Cancer Society; American Council for the Arts; American Heart Assn.; American Red Cross; American Theatre Assn.; Assn. of Governing Boards of Universities and Colleges; Conference of Major Superiors of Men; Council for American Private Education; Council for Financial Aid to Education; Council of Jewish Federations; Council on Foundations; General Conference of Seventh Day Adventists; Girl Scouts of the USA; International Service Agencies; Joint Action in Community Service; Leukemia Society of America; Lutheran Council in the USA; Lutheran Resources Commission; Mental Health Association; National Assembly of Com-

member organizations individually: American Heart Association; American Red Cross; Association of Governing Boards of Universities and Colleges; Council for Financial Aid to Education; Girl Scouts of the USA; Lutheran Council in the USA; Mental Health Association; National Institute of Independent Colleges and Universities; National Board of Young Men's Christian Associations; National Conference of Catholic Associations; National Council of Churches of Christ in the U.S.A.; National Council on the Aging, Inc.; National Council on Crime and Delinquency; National Health Council, Inc., and the following member voluntary health agencies: American Cancer Society, American Diabetes Association, American Lung Association, American Social Health Association, Arthritis Foundation, Committee to Combat Huntington's Disease, Cystic Fibrosis Foundation, Epilepsy Foundation of America, National Easter Seal Society for Crippled Children and Adults, National Foundation—March of Dimes, National Kidney Foundation, National Multiple Sclerosis Society, National Society to Prevent Blindness, Muscular Dystrophy Association, and United Cerebral Palsy Association; Planned Parenthood Federation of America, Inc.; and United Way of

munity Arts Agencies; The National Assembly of National Voluntary Health and Social Welfare Organizations, Inc.; National Assn. for Hospital Development; National Assn. of Independent Colleges and Universities; National Audubon Society; National Center for Voluntary Action; National Conference of Catholic Charities; National Council of Churches of Christ—Commission on Stewardship; National Council on the Aging; National Council on Philanthropy; National Council of Women in USA; National Council of YMCAs of USA; National Foundation—March of Dimes; National Health Council, Inc.; National Society of Fund Raising Executives, Inc.; National Urban League; Planned Parenthood—World Population; Salvation Army-Headquarters Division; United Methodist Church—General Council on Finance and Administration; U.S. Catholic Conference; U.S. Olympic Committee; United Way of America; Volunteers of America; and Zero Population Growth. The National Council of Churches of Christ in the U.S.A. is a cooperative agency of thirty national Christian religious bodies having an aggregate membership of over forty million.

America, on the side and in support of respondent Citizens for a Better Environment.

INTRODUCTION

This case presents the question whether, and to what extent, a local government may impose restrictions upon charitable solicitation without violating rights guaranteed by the First Amendment of the Constitution of the United States. Petitioner Village of Schaumburg, by local ordinance, imposed substantial restraints on charitable solicitation within its boundaries, including an outright prohibition of solicitation by any organization that expends for charitable purposes, as defined in the ordinance, less than 75% of amounts received as contributions. Respondent Citizens for a Better Environment, an Illinois not-for-profit corporation created for the purpose of protecting, enhancing and maintaining the environment within the State of Illinois,[2] was precluded by the Schaumburg ordinance from soliciting for contributions within the Village by reason of its failure to satisfy that percentage requirement. The United States Court of Appeals for the Seventh Circuit, affirming the judgment of the United States District Court for the Northern District of Illinois, held the Schaumburg ordinance unconstitutional as applied to Citizens for a Better Environment on the ground (Petition for Writ of Certiorari, Appendix A, p. A-10): that the 75% limitation:

> is on its face unreasonable when applied to an organization which by its nature allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization.

[2] Respondent's Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit, pp. 2-3.

However, the Court of Appeals qualified its decision as follows (Petition for Writ of Certiorari, Appendix A, p. A-10):

> We do not decide the reasonableness of the 75 percent requirement as applied to solicitation by the more traditional charitable organizations.

INTEREST OF THE AMICI CURIAE

The *amici curiae* by and on whose behalf this brief is filed are major national voluntary organizations[3] of the United States. Because they operate on a nationwide basis, these organizations are subject to a patchwork of state and local laws regulating charitable solicitation, of which the ordinance of the Village of Schaumburg is a part. A number of the *amici curiae* derive a large percentage of their revenues from door-to-door solicitation and similar direct personal contact solicitation. Hence, the cumulative impact of state and local regulations, like the subject ordinance, substantially impairs the ability of these organizations to conduct effective national fund-raising campaigns.

The particular interest of the *amici curiae* in submitting a separate statement of position is that while the respondent Citizens for a Better Environment represents one type of organization subject to the Schaumburg ordinance, the organizations submitting this brief represent a broad spectrum of organizations potentially subject thereto, including "the more traditional charitable

[3] The American Red Cross has been recognized by this Court to be a federal instrumentality and, accordingly, enjoys immunity from the "patchwork" of state and local statutes and ordinances regulating charitable solicitations and contributions. See *Department of Employment* v. *United States*, 385 U.S. 355 (1966). Notwithstanding such exemption from nonfederal regulation, however, the Red Cross joins in and fully supports this brief *amicus curiae* because of the seriously adverse effects the Schaumburg ordinance and similar enactments impose upon federated fund-raising organizations with which the Red Cross participates in the solicitation of charitable contributions.

organizations" (as to which the Court of Appeals reserved judgment), organizations largely engaged in public education, and organizations primarily active in efforts to influence legislation.

Moreover, the implications of the Schaumburg ordinance and similar enactments are broader than their impact on door-to-door solicitation, since comparable restrictions can and do impose significant limitations on other techniques of fund-raising used by charitable organizations. "[I]n appraising a statute's inhibiting effect upon [First Amendment] rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar." *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 432 (1963).

SUMMARY OF ARGUMENT

Arbitrary percentage limitations on fund-raising and administrative costs of charitable solicitation, like that imposed by the Village of Schaumburg, unreasonably restrain fund-raising abilities of many charitable organizations, and so violate First Amendment guarantees of free expression. Further, the Schaumburg ordinance, and similar enactments, which may exclude many charitable organizations altogether from solicitation, which impose unreasonable restraints on recruitment and use of volunteer workers, and which impair the free exercise of religious liberty, similarly violate the First Amendment and deprive the charities of the equal protection of the law. Private voluntary, charitable organizations that operate on a national scale are seriously impacted by the patchwork of state and local regulation, which imposes a myriad of conflicting and confusing restrictions on door-to-door solicitation and other vital fund-raising methods. Such restrictions are overbroad, and unnecessary to accomplish valid police power objectives of states and localities, which could be satisfied by reasonable uniform disclosure requirements.

ARGUMENT

1. PRIVATE NON-PROFIT GROUPS AS A VEHICLE FOR THE EXERCISE OF FIRST AMENDMENT FREEDOMS HAVE INCREASINGLY BEEN THREATENED BY THE DIFFICULTY OF SECURING A BROAD BASE OF PRIVATE FINANCIAL SUPPORT.

Private voluntary organizations attempting to serve the public interest on a not-for-profit basis, have been a special characteristic of American society at least since the early days of the Republic, as de Tocqueville's often-quoted observation demonstrates.[4]

Private contributions of money and property in the non-profit sector have been estimated in recent years to exceed 26 billion dollars annually,[5] with contributed hours

[4] "Americans of all ages, all stations in life, and all types of disposition are forever forming associations. There are not only commercial and industrial associations in which all take part, but others of a thousand different types—religious, moral, serious, futile, very general and very limited, immensely large and very minute. Americans combine to give fetes, found seminaries, build churches, distribute books, and send missionaries to the antipodes. Hospitals, prisons, and schools take shape in that way. Finally, if they want to proclaim a truth or propagate some feeling by the encouragement of a great example, they form an association. In every case, at the head of any new undertaking, where in France you would find the government or in England some territorial magnate, in the United States you are sure to find an association." ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 485 (J. Mayer & M. Lerner Ed. 1966).

[5] Estimate given is for 1973. COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS, REPORT—GIVING IN AMERICA—TOWARD A STRONGER VOLUNTARY SECTOR 14 (U.S. Dep't of the Treasury, 1975) (hereinafter "Filer Commission Report"). For 1978, contributions by individuals is estimated to have totaled 32.8 billion dollars. American Association of Fundraising Council, Giving USA—1979 Annual Report 10 (1979). See also Nelson, "Private Giving in the American Economy, 1960-1972", in I Research Papers Sponsored by the Commision on Private Philanthropy and Public Needs—History, Trends and Current Magnitudes 115, 127 (U.S. Dep't. of the Treasury, 1977) (hereinafter "I Filer Research Papers"); Rudney, "The Scope of the Private Voluntary Charitable Sector", in I Filer Research

of volunteer service time, nearly 6 billion hours annually, having a value in excess of an additional 26 billion dollars. There are estimated to be as many as 6 million organizations in the private voluntary non-profit sector, employing one out of every ten service workers in the United States, and one out of six professional workers,[6] —together with countless millions of volunteer workers.

The Commission on Private Philanthropy and Public Needs gave an "intuitive indication" of the diversity within the private non-profit voluntary sector by the following "minute sample":

> Bedford-Stuyvesant Restoration Corporation, Phillips Exeter Academy, American Acupuncture and Herbs Research Institute, Senior Citizens Association of Wausau (Wisc.), Talmudic Research Institute, New Alchemy Institute, Aspen Institute for Humanistic Studies, Chapin School Ltd., Citizens Committee of Modernization of Maryland Courts and Justice, Bethlehem (Pa.) Public Library, Visiting Nurse Association of Milwaukee, YMCA Railroad Branch of Toledo, Chinatown (N.Y.) Day Care Center, Zen Center of Los Angeles, Big Brothers of Rapid City, World Affairs Council of Syracuse, N.Y., American Parkinson Disease Association, Bethel Temple of Evansville (Ind.), Metropolitan Opera Company, Fathers Club of Mt. St. Mary's Academy (Watchung, N.J.), Mothers Club of Stanford University, Sons and Daughters of Idaho Pioneers, Family Planning Committee of Greater Fall River (Mass.)[7]

Papers 135; Morgan, Dye, & Hybels, "Results from Two National Surveys of Philanthropic Activity," in I Filer Research Papers 157, 224; Roistacher & Morgan, "Charitable Giving, Property Taxes, and Itemization on Federal Tax Returns, A Final Report from a National Survey," Institute for Social Research, University of Michigan (1974).

[6] Filer Commission Report, note 5 *supra*, p. 11.

[7] Filer Commission Report, note 5 *supra*, pp. 36-37.

While individual private voluntary organizations perform some specialized functions, they often combine philanthropy in the usual sense, *i.e.*, support for the poor and unfortunate, with innovation, education, and advocacy of new and sometimes controversial, even unpopular, ideas about how to deal with unsolved social problems.

The financial base of private philanthropic giving is quite broad. While a disproportionate amount comes from high-income contributors, it is estimated that more than half comes from households with annual incomes of less than $20,000.[8] Contributions of time are even more broadly distributed than contributions of money and property. There are also indications that those who give volunteer service are likely in addition to contribute money or property, so that opportunities for volunteer service tend to broaden and expand the availability of voluntary financial support.[9]

Notwithstanding the impressive statistics of charitable giving, however, the base of private voluntary support has been seriously eroding over the past twenty years. Giving by individuals declined about 15 percent between 1960 and 1972.[10] One key indicator of this decline, "net contributions", *i.e.* total contributions less the reduction in federal income taxes to which contributors are entitled, declined from 3.5 percent of adjusted gross income in 1956 to 2.1 percent in 1970—a 60% decline.[11]

The decline in contributions has been attributed to economic uncertainty, inflation, social disorganization and other factors. Whatever its causes, it is unhappily coupled with an overall increase in the cost of performing philanthropic activities, which, economists have calculated, significantly outruns the effects of inflation on the general national economy.[12] At the same time there is increasing emphasis on programs of charitable organizations which are designed to reach disadvantaged groups outside the scope of the traditional beneficiaries of charitable activities, increasing complexity of the social problems with which these organizations are faced, and the rising cost of fund-raising itself. These trends have further exacerbated the difficulties attendant upon declining percentages of individual giving. Moreover, unlike businesses operating on a for-profit basis, a charity cannot pass on any portion of its increased costs to contributors or charitable beneficiaries. Accordingly, any limitation on the charity's ability to raise funds has a severe impact on its ability to perform charitable functions, and indeed, to function as a viable entity.

[8] Filer Commission Report, note 5 *supra*, p. 14; Morgan, Dye, & Hybels, note 5 *supra*, pp. 160-167.

[9] Morgan, Dye & Hybels, note 5 *supra*, p. 228; Roistacher & Morgan, note 5 *supra*.

[10] Filer Commission Report, note 5 *supra*, pp. 70-71; Nelson, note 5 *supra*, pp. 125-129.

[11] Filer Commission Report, note 5 *supra*, p. 71.

[12] Economist Ralph Nelson has concluded that:

> The general rise in prices, however, does not take full account of the price rise in the particular kinds of services purchased by private giving. The production of philanthropic services is more predominantly labor intensive than is the production of goods and services in general. To appreciate this one need only recall that the major part of philanthropic spending purchases religious pastoral and educational service, college education, medical and hospital care, and music, dance, and drama. In the production of these services there is limited opportunity for the substitution of capital for labor and limited opportunity for reduction in the unit cost, and price, of these services.

Nelson, note 5 *supra*, at 117.

See also Appendix A, Table A-4, thereto, "Price Deflators Used for Specific Categories of Recipients," which indicates the dramatic increase (1960-1972) in costs of providing charitable services. Nelson, note 5 *supra*, p. 133.

The court below did not reach the question of the effect of the ordinance on "the more traditional charitable organizations." But this Court has traditionally been particularly sensitive to First Amendment rights of all charitable organizations, and has considered them in a separate context from situations involving commercial organizations and activities. *Schneider* v. *Irvington*, 308 U.S. 147, 165 (1939). The First Amendment right of charitable organizations to communicate to the public the needs of those who depend upon their support —the poor, the sick, the ignorant, the elderly—are as much a part of the nation's political fabric as the advocacy of governmental action. "These eleemosynary institutions do not fill the place, which would otherwise be occupied by government, but that which would otherwise remain vacant." *Trustees of Dartmouth College* v. *Woodward*, 17 U.S. (4 Wheat.) 518, 647 (1819).

2. DOOR-TO-DOOR SOLICITATION IS AN ESSENTIAL ELEMENT IN THE FUND RAISING EFFORTS OF NATIONAL ORGANIZATIONS.

Door-to-door, and other direct personal contact solicitation,[13] is a vital fund-raising method for many charitable organizations of nationwide scope. Not only is the amount of funds accrued through such solicitation substantial, but door-to-door solicitation is principally carried on through the efforts of volunteer workers.[14] The fund-

[13] In this connection, the Schaumburg ordinance controls not only door-to-door solicitation, but also any "use of the public streets and public ways" for solicitation purposes. Petition for Writ of Certiorari, Appendix A, p. A-18. Examples of direct contact solicitation on a national basis include the "Mother's March" of the National Foundation—March of Dimes, Girl Scout cookie sales, the Salvation Army's Christmas kettles, and "porch light" campaigns used by many organizations.

[14] The organizations supporting this brief *amicus curiae* use few, if any, paid or professional solicitors in nationwide door-to-door campaigns.

raising expense incurred by this method is, therefore, lower than for other forms, such as mail and telephone solicitation. Accordingly, any significant impairment of door-to-door solicitation not only deprives charitable organizations of an important source of funds, but also forces them to rely on more costly fund-raising methods.

The importance of door-to-door solicitation for nationwide charities can be readily perceived by reference to voluntary health organizations which engage in substantial door-to-door and other direct contact fund-raising solicitation activities. In a survey of major voluntary health organizations, conducted by the National Health Council to aid in preparation of this brief, eleven such organizations furnished figures on total contributions received through door-to-door and similar direct contact solicitation, on a nationwide basis, for their most recent fiscal years. Cumulatively, these charities obtained approximately 45% of all contributed funds through such direct contact methods, ranging from 77% for the National Kidney Foundation, down to 13% for the National Easter Seal Society.[15] Similarly, the United Way of

[15] The specific breakdown is as follows:

Name of Organization	Estimated Total Contributions for Most Recently Completed Fiscal Year	Amount Raised in Personal Solicitation Activities (Approximate)	
National Foundation—March of Dimes	$ 62,396,000	$ 32,641,000	(52%)
American Cancer Society	90,000,000	27,721,816	(31%)
National Easter Seal Society for Crippled Children and Adults	37,968,385	4,997,520	(13%)
Muscular Dystrophy Association, Inc.	65,016,996	29,866,482	(46%)

[Footnote continued on page 12]

America furnished an estimate that in 1978 local United Way organizations alone raised approximately $33,000,000 by residential campaigns.

While these figures are only illustrative, they do confirm that door-to-door solicitation is significant to many national charities, and essential to some, and that the impact of unreasonable restrictions thereon by states and localities, like the Village of Schaumburg, can severely impair, if not destroy, the ability of these organizations to function.

Further, the burdensome nature of Schaumburg-type ordinances goes beyond the issue whether a given charity can qualify under a local ordinance and obtain a permit to solicit. Even those organizations which can meet the bewildering array of restrictions and qualifying requirements are often, as a practical matter, precluded from

[15] [Continued]

Name of Organization	Estimated Total Contributions for Most Recently Completed Fiscal Year	Amount Raised in Personal Solicitation Activities (Approximate)	
Cystic Fibrosis Foundation	14,000,000	9,192,000	(66%)
Arthritis Foundation	17,150,000	9,750,000	(57%)
National Kidney Foundation	7,783,000	6,000,000	(77%)
United Cerebral Palsy Associations	21,000,000	9,262,227	(44%)
American Diabetes Association	6,297,467	2,450,000	(39%)
National Multiple Sclerosis Society	25,000,000	18,019,000	(72%)
American Heart Association	56,002,264	13,125,624	(23%)
Totals	$381,964,112	$173,025,659	(45%)

conducting campaigns. This preclusion results from the circumstance that such restrictions, particularly those that impose burdens on volunteer workers, such as individual registration, fingerprinting, photographing, or requirements that they obtain identification papers and badges, make it difficult, if not impossible, for the charities to attract sufficient volunteers to carry on a campaign.[16] Limitations on the days in which campaigns can be conducted, and reducing the hours within the day when solicitation can be made pose similar problems.

Accordingly, a regulatory scheme that impairs the ability of charitable organizations to conduct door-to-door and other direct contact solicitation poses a serious threat to the ability of those organizations to function in the charitable sector.

3. AN ARBITRARY LIMIT ON SOLICITATION COSTS IMPOSES UNREASONABLE BURDENS ON THE EXERCISE OF FIRST AMENDMENT FREEDOMS.

The percentage cost of fund-raising activities is not an adequate measure of the efficiency or effectiveness of a charitable organization. The costs incurred during fund raising campaigns are a function of many diverse factors, largely beyond the control of the organization,[17] including the popularity or unpopularity of the cause, the

[16] In this connection, and in connection with the preparation of this brief, the National Mental Health Association of Greater Chicago submitted a report on its experiences in the Greater Chicago area in recent years, in attempting to comply with the patchwork of local ordinances currently in force in Schaumburg and neighboring municipalities. While not submitted here as evidentiary material, the report provides a perspective on the nature and magnitude of the problem at issue, and is appended hereto as Appendix B.

[17] Smallwood & Levis, "The Realities of Fund-Raising Costs and Accountability," PHILANTHROPY MONTHLY, September 1977, at 7, 11-16.

extent it appeals to high-or-low income groups,[18] and the novelty of the appeal (which can be a positive or negative factor).[19] The cost of door-to-door solicitation is further affected by such factors as the availability of dedicated and skilled volunteers, the geographic and demographic characteristics of the area being covered, and the extent to which solicitors may be required to explain to potential contributors the nature, objectives and method of the organization for which contributions are being solicited; it is even affected by the weather. Older, well-established charities will normally have lower fundraising costs than newer, small groups which cannot initially readily attract significant numbers of volunteer solicitors.[20] These factors vary to a great extent from

[18] For example, a survey reported in Morgan, Dye & Hybels, note 5 *supra*, p. 208, indicated that low-income donors gave an overwhelming percentage of contributions to religious organizations, while high-income donors contributed only marginally to such groups. By contrast, high-income donors contribute a significant portion of their total contributions to institutions of higher education, and other educational organizations. While both high-and low-income groups make substantial contributions to health and medical organizations, closer analysis indicates that low income donors give mainly to "mass-appeal" health organizations, whereas the well-to-do give directly to particular hospitals. See also Filer Commission Report, note 5 *supra*, pp. 132-133.

[19] National Health Council, VIEWPOINTS—STATE LEGISLATION REGULATING SOLICITATION OF FUNDS FROM THE PUBLIC 5 (1976 Rev. Ed.). In a prepared statement submitted to the House Subcommittee considering federal regulation of charitable solicitation, the Vice President of the Council of Better Business Bureaus stated:

> [O]rganizations working for unknown or unpopular causes must expend greater fund raising efforts that will inevitably result in higher fund raising costs. Clearly, an appeal for a rare disease will not elicit as great a response from the public as an appeal for cancer. Moreover, such organizations attract fewer volunteer (sic) whose efforts can help reduce fund raising percentages.

Hearings on H.R. 41 before the Subcomm. on Postal Personnel and Modernization of the House Comm. on Post Office and Civil Service, 95th Cong. 1st Sess. 193 (hereinafter "Hearings on H.R. 41") (Statement of Helen L. O'Rourke).

[20] "Organizations with long range capital campaigns would necessarily have high costs for the first year or two and income for the same period would be on the low side. Donors presented with these statistics would get a distorted view of the effectiveness of the organizations' fundraising ability and this view could result in a lack of support critical to the program's success.

Basically, these requirements favor those organizations which have been established for a period of time, which are relatively well known to the general public and which have a large segment of volunteer workers. These organizations, if compared with some others without the benefits they enjoy, would have a low percentage of fundraising costs and if the public were to make their determination to give only to those with the lower costs, the others would, in all probability, cease to exist." Hearings on H.R. 41, note 19 *supra*, p. 75 (Statement of John J. Schwartz).

organization to organization, program to program, and campaign to campaign,[21] and are almost totally beyond the control of the organization.[22]

[21] National Health Council, VIEWPOINTS: STATE LEGISLATION REGULATING SOLICITATION OF FUNDS FROM THE PUBLIC 5 (1976 Rev. Ed.); Boyle & Jacobs, "Fund Raising Costs," PHILANTHROPY MONTHLY, April, 1979, at 5.

[22] Moreover, it is frequently difficult to distinguish with precision fund-raising from program costs, for example, where a charitable organization conducts a single campaign with important educational and information-gathering objectives as well as fundraising objectives. In such case, a substantial portion of costs incurred in conducting the campaign may reasonably and properly be attributed to program activities rather than fund-raising. Yet, many established charities, such as the United Way and the members of the National Health Council, have adopted conservative accounting and financial reporting standards, such as the standards established in *Audits of Voluntary Health and Welfare Organizations* (1974) of the American Institute of Certified Public Accountants. These standards have been implemented by the organizations in, for example, *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Agencies* (1974 Rev.), jointly issued by the National Health Council, the United Way and the National Assembly of Voluntary Health and Social Welfare Organizations; and United Way of America, *Accounting & Financial Reporting* (1974). These standards provide generally that costs incurred jointly for fund-raising and program activities should be allocated entirely to fund-raising expense rather than program costs. By contrast, newer organizations, including many advocacy-type organizations, may adopt more flexible standards, such as *Accounting Principles and Reporting Practices for Certain Non-Profit Organizations* (Draft, 1978), also by the American Institute of

The patchwork nature of the state and local regulatory scheme makes it particularly difficult for national organizations to comply with regulations of the type at issue here.[23] "[I]n appraising a statute's inhibiting effect

---

Certified Public Accountants, which recommend that a substantial portion of costs associated with fund-raising activities be allocated to program expense. In each case, the organization would with equal candor, conform its accounting practices to nationally recognized and generally accepted accounting standards, with the result, however, that the established organization might be unable to satisfy a twenty-five percent limitation on administrative costs, while the new group would succeed. No public purpose could reasonably be served by such disparate treatment, but the very possibility that such a result might obtain illustrates the inherently arbitrary character of percentage limitations.

[23] For example, in testimony before a House subcommittee considering federal regulation of charitable solicitation, former Postmaster General J. Edward Day, speaking on behalf of Project Hope and other organizations, stated:

> It bears emphasis that the prospect of inconsistent legislation in this field by States and localities is very real. . . . [A]t least 18 States and the District of Columbia require specific information to be filed with the State government prior to solicitation of contributions from citizens of that State.
>
> Many other States are presently considering legislation which would further regulate the solicitation of charitable contributions. A number of municipalities also impose their own additional requirements.
>
> While the purpose of these laws is identical, the specific forms which they take vary in detail as a result of their being enacted by scores of different legislative bodies. Usually, the variations are just enough to require the charitable organization to spend valuable time and effort to comply with the form of each different law; rarely, if ever, do the variations represent different judgments as to what is really needed to protect the public.

Hearings on H.R. 41, note 19 *supra*, p. 68 (Statement of J. Edward Day). Similarly, the President of the American Association of Fund Raising Counsel, Inc., testified before the same subcommittee that:

> Just to keep aware of the new laws being introduced in many of our States and municipalities, and the amendments to existing legislation is a mammoth job. And the compliance is costly

upon [First Amendment] rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar." *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 432. Given the diversity of fund-raising practices among private voluntary organizations, and the confusing welter[24] of regula-

---

> for the charities. This compliance and monitoring necessarily takes away the program dollars that go to the philanthropic causes and funnels them into additional administrative costs.

Hearings on H.R. 41, *supra*, p. 76 (Statement of John J. Schwartz). The President of the National Association for Hospital Development stated in the same hearings:

> At the present, the law on this subject is embodied in over 30 statutes in various States and the District of Columbia and in countless local ordinances. For the most part, these laws are poorly enforced and impose varying requirements, forms, due dates, exemptions, and the like. It is next to impossible for a charitable organization to be fully aware of, let alone comply with, these differing and conflicting laws.

Id. at 140 (Statement of Lynn E. Kandel). A more current survey indicates that as of December, 1978, 39 states had enacted statutes governing charitable solicitation, with a wide variety of requirements. THE PHILANTHROPY MONTHLY, SURVEY OF STATE LAWS REGULATING CHARITABLE SOLICITATION (Looseleaf, 1978 Rev.). Citation of state statutory provisions governing charitable solicitation is provided in Appendix A.

[24] In a written statement submitted to the House subcommittee considering federal regulation of charitable solicitation, the Section of Taxation of the American Bar Association stated:

> At the present, 31 states, the District of Columbia and innumerable localities (counties, cities and towns) have statutes and ordinances relating to charitable solicitations. The requirements of these laws . . . and the enforcement efforts with respect to them vary considerably. The present legal situation in this regard is sufficiently confusing, to the point that full compliance with all of these laws would be extremely costly and time-consuming and avoidance and violation of these laws is encouraged.

Hearings on H.R. 41, note 19 *supra*, p. 164.

tory requirements from one locality to another, the cumulative effect of ordinances such as the one at issue here cannot help but have an "inhibiting effect" on the First Amendment rights of charitable organizations. Nor are these "inhibiting effect[s]" necessarily limited to advocacy organizations; they extend to "traditional charitable organizations" which may be seeking funds, for example, to report research on newly identified health problems, or which may be attempting to coordinate additional fund raising in many different localities. Further, the multiplicity of registration, permit or license fees in most states and many localities is itself a serious drain on the charities' resources.

The inhibiting effect may be particularly acute in new or special fund-raising situations,[25] where start-up costs may absorb a large portion of early proceeds. This factor further underscores the point that ordinances of the Schaumburg type appear to curb freedom of expression in direct proportion as that expression is critical to the objectives of the organization, and, accordingly, restrict the freedom of individual citizens to participate in the free flow of ideas.

There is a further unreasonable restraint on national organizations. Where conflicting local requirements make across-the-board compliance difficult or impossible, a national charitable organization may simply decide not to solicit funds in particular local jurisdictions. The effect of an organization's withdrawal is to deny citizens of such localities the opportunity to support that charitable purpose, and to deny beneficiaries of the charity across

[25] Until the contributing public learns that these high initial costs are essential for many legitimate, new organizations to get off the ground, the beneficaries [sic] of disclosure [of percentages of program and administrative costs] will be the large, entrenched, non-profit [institutions]. . . .

Hearings on H.R. 41, note 19 *supra*, p. 88 (Statement of Robert O. Bothwell, Executive Director, National Committee for Responsive Philanthropy).

the country the added benefit of those contributions. In this fashion the local authorities have, directly or indirectly, imposed restraints upon a nationwide constituency, in a fashion which may extend far beyond any legitimate local interest, on the grounds of protecting the citizens of a locality from fraud and unreasonable invasion of privacy. But the First Amendment commands a more sensitive approach to regulation which effects protected activity. "[C]onsiderations of this sort do not empower a municipality to abridge freedom of speech and press." *Schneider* v. *Irvington*, 308 U.S. 147, 164 (1939). See also *Tucker* v. *Texas*, 326 U.S. 517, 520 (1946); *Marsh* v. *Alabama*, 326 U.S. 501, 509 (1946); *Martin* v. *Struthers*, 319 U.S. 141, 149 (1943). And such interests may not be served by vesting "in municipal officers the undefined power to determine what messages residents will hear . . . ." *Hynes* v. *Mayor of Oradell*, 425 U.S. 610, 617 (1976); *Thomas* v. *Collins*, 323 U.S. 516, 540-541 (1945); *Lovell* v. *Griffin*, 303 U.S. 444, 451 (1938).

4. THE REQUIREMENT THAT CHARITABLE ORGANIZATIONS SUBMIT PROOF OF EXEMPT STATUS UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE UNREASONABLY EXCLUDES OTHER CHARITABLE ORGANIZATIONS FROM THE EXERCISE OF THEIR FIRST AMENDMENT RIGHTS AND DENIES THEM THE EQUAL PROTECTION OF THE LAWS.

Section 22-20(f) of the Schaumburg Ordinance requires "[s]atisfactory proof that the organization is a tax exempt organization under the Internal Revenue Code of the United States, Section 501(c)(3)." That requirement excludes a number of charitable organizations, which are not Section 501(c)(3) organizations, but are rather classified under other subsections of Section 501

(c), *e.g.*, Section 501(c)(4),[26] or Section 501(c)(6).[27] Such organizations are particularly dependent on solicitation, not only for fund-raising purposes,[28] but also in order to communicate generally with their constituencies. Examples of this type of organization are the League of Women Voters and Common Cause.

Petitioner apparently argued below that charitable organizations not coming within the scope of the ordinance's definition of "[c]haritable organization" can carry on their solicitation by meeting the qualifications for commercial solicitation. But if this interpretation is adopted, then it would appear that some *bona fide* charities are being subjected to an unreasonable classification in violation of the constitutional requirement of equal protection of the laws. *Shapiro* v. *Thompson*, 394 U.S. 618, 634 (1969); *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663, 670 (1966); *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942); *Schneider* v.

---

[26] Section 501(c)(4) of the Internal Revenue Code of 1954, as amended, covers:

> (4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

[27] Section 501(c)(6) organizations include:

> (6) Business leagues, chambers of commerce, real-estate boards, boards of trade . . . not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

[28] If the Schaumburg ordinance is read to exclude from charitable solicitation organizations which do not qualify under Section 501(c)(3), but rather fall under other subsections of Section 501(c), then, for example, a community-sponsored childrens' baseball or soccer team would be foreclosed from soliciting funds door-to-door to pay for uniforms, or to send the team to out-of-town championship games.

Irvington, 308 U.S. 147, 164 (1939). The court below considered the ordinance vague on this point, and suggested further that some organizations might not be able to qualify either as charities, or as for-profit groups, and thus might be excluded from soliciting contributions in the Village on any terms (Petition for Writ of Certiorari, Appendix A, p. A-9, n. 6).

If the municipality may avoid the burden of establishing that an organization does not qualify as a "[c]haritable organization," entitled to solicit funds, and may impose the burden on the charity to establish its status as a bona fide charitable organization, through the device of a broadly worded ordinance of the Schaumburg-type, the locality is thus empowered to restrain nationwide charitable solicitation far in excess of the reasonable and legitimate police power concerns of local governing bodies.[29]

---

[29] We note that petitioner relies (Petitioner's Brief at 40-41) on the case of *Citizens for a Better Environment, Inc.* v. *Nassau County*, 488 F.2d 1353 (2d Cir. 1973) for the proposition that the courts below erred in deciding this case on motion for summary judgment. The *Nassau County* case is, however, inapposite, for the court therein took great pains to stress the very narrow issue involved (488 F.2d at 1355):

> We stress this narrow scope, because while it is true that underlying this case is the always delicate balance between one man's right to express himself and another's right to be left alone, that troublesome issue is not presented in this appeal. Rather we are asked—as was the district court—to determine whether under state and local law the plaintiffs are completely exempt from local solicitation ordinances which even they concede to be fundamentally valid.

Later (488 F.2d at 1362) the court reiterated this point:

> [A]t the risk of becoming repetitious, it must again be noted that CBE does not question the validity of the local ordinances. This is not, therefore, an action challenging a statute or ordinance as facially invalid under the First Amendment—the type of case where abstention by a federal court has rightly been held to be unwarranted and unwise.

[Footnote continued on page 22]

5. ADEQUATE MEANS ARE AVAILABLE AND IN GENERAL USE IN OTHER JURISDICTIONS TO ACCOMPLISH THE LEGITIMATE POLICE POWER OBJECTIVES OF THE ORDINANCE AT ISSUE.

Reasonable regulation of charitable solicitation has been considered in previous decisions of this Court, and while upholding the right of States and localities to regulate solicitation, this Court has emphasized that "[r]egulation of this area 'must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly . . . .'" *Hynes* v. *Mayor of Oradell*, 425 U.S. 610, 616 (1976) quoting *Thomas* v. *Collins*, 323 U.S. 516, 540-41 (1945). See also *Schneider* v. *Irvington*, 308 U.S. 147, 164 (1939); *Lovell* v. *Griffin*, 303 U.S. 444, 451 (1938). The court below clearly recognized, and followed those pronouncements.[30]

---

[29] [Continued]

By contrast, the instant case directly and immediately raises the very serious constitutional questions absent from *Nassau County*, *i.e.*, whether the Schaumburg ordinance is on its face unconstitutional as violative of the First and Fourteenth Amendments.

[30] The Court below stated:

> [W]hen this regulation involves First Amendment activity, that regulation must be accomplished "so as not to intrude upon the right of free speech," 425 U.S. 616, 96 S. Ct. at 1758-59; it must be done "with narrow specificity," 425 U.S. at 620, 96 S. Ct. at 1760, be "suitably designed" to serve the legitimate interest involved, 425 U.S. at 619, 96 S. Ct. at 1760, and must not give broad discretionary powers to municipal officials in granting a permit, 425 U.S. at 617, 96 S. Ct. at 1759.
>
> This framework is consistent with and further explained by previous Supreme Court decisions relating to the regulation of door-to-door solicitation. The Court has recognized the purposes of the protection of the people from fraud and disruption of the peaceful enjoyment of their homes, but has held invalid such regulation when it unreasonably obstructed the collection of funds, *Cantwell* v. *Connecticut*, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940), or when it, in fact, prohibited canvassing and solicitation, *Schneider* v. *State*, 308 U.S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939). In *Martin* v. *Struthers*, 319 U.S. 141, 63 S. Ct. 862, 87 L. Ed. 1313 (1943), the Court recognized the need to balance the purposes of protection and peace against the traditions and values of free discussion and the dissemination of ideas.
>
> If the restrictions placed on canvassing and soliciting by section 22-20(g) do not meet these standards, then the provision must fail.

Petition for Writ of Certiorari, Appendix A, p. A-7.

It concluded (Petition for Writ of Certiorari, Appendix A, p. A-11) that the ordinance:

> is not a sufficiently narrow solution to the problems of potential fraud or to the need to identify those organizations entitled only to the protections afforded commercial speech. The freedom of expression of organizations which do not present these problems is also infringed, either by absolute prohibition or the additional burden of the for-profit permit requirements.[31]

---

[31] Petitioner contends that the decision of the court below was in conflict with the decision in *National Foundation* v. *City of Fort Worth*, 415 F.2d 41 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970). However, the *National Foundation* case, which upheld a 20% limitation on costs of soliciting is clearly distinguishable, since that ordinance permitted waiver of the percentage requirement on a showing that "a cost higher than twenty per cent is not unreasonable." 415 F.2d at 43-44 n. 2, 46. The Schaumburg ordinance permits no such waiver, and if an organization failed to meet the 25% limit on administrative costs the Village Board apparently had no discretion to issue a permit. But the correctness of the decision in *National Foundation* is not free from doubt. The court gave insufficient consideration to the inherent arbitrariness of any percentage limitation, and insufficient attention to this Court's repeated pronouncements on the very narrow path a governmental body must walk in placing any restrictions on constitutionally protected expression. The court erred in granting the ordinance a "strong presumption of constitutionality," 415 F.2d at 46, and in placing the burden on the charity to show the unreasonableness of the ordinance. The burden should have been on the city to demonstrate that the ordinance constituted a reasonable and sufficiently narrow classification. Accordingly, the decision in *National Foundation* is inconsistent with this Court's decision in *Hynes* v. *Mayor of Oradell* and *Thomas* v. *Collins*, *supra*, and should be disapproved. In this connection, we also call attention to the recent

There can be no reasonable question that the activities of charitable organizations are entitled to full first amendment protections even when they involve fund-raising and solicitation. *Cf. Bigelow* v. *Commonwealth of Virginia*, 421 U.S. 809, 818-19 (1975). To the extent regulation of that type of expression is constitutionally permissible at all, where, as here, "there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." *Bates* v. *City of Little Rock*, 361 U.S. 516, 524 (1960).

The ordinance at issue contains provisions in addition to the percentage limitation [32] which are of questionable

---

decision of the North Carolina Court of Appeals for Mecklenburg County, in *Heritage Village Church* v. *North Carolina*, No. 77CVS6460 (N.C. Ct. App. April 3, 1979) in which the court held invalid a thirty-five percent limitation on charitable fund-raising costs as violative, *inter alia*, of the First Amendment rights of expression and religious freedom, and the Due Process and Equal Protection clauses of the Fourteenth Amendment. The North Carolina court expressly declined to follow the reasoning of the *National Foundation* case.

[32] We also call attention to the recent decision of the United States District Court for the Western District of North Carolina in *Carolina Action* v. *Pickard*, 465 F. Supp. 576 (W.D.N.C. 1979). The court struck down on First and Fourteenth Amendment grounds a municipal ordinance, strikingly similar to the Schaumburg ordinance, which imposed a 25 percent limitation on "the cost of raising the funds and all expenses incident to the solicitation (including all fees and commissions paid or to be paid to the promoter or promoters of the same) . . . ." 465 F. Supp. at 584. The court stated (465 F. Supp. at 581):

> The mandatory imposition of the 25% cost-of-solicitation rule set out in § 2-30 is overly broad. It stultifies protected speech, as it makes the ability to engage in neighborhood canvassing-solicitation dependent on a showing that plaintiff's representatives and ideas will be sufficiently popular to obtain at least $3 in contributions above every $1 expended in the canvass. Such a requirement is likely to operate most seriously to the detriment of those organizations espousing unusual or unpopular views and therefore most urgently in need of protection from encroachments on their First Amendment rights. It is the unpopular or unusual organizations whose survival may depend on being able to conduct the type of integrated campaign utilized by plaintiff. The imposition of a 25% cost-of-solicitation limitation, without providing relief for organizations that can demonstrate their bona fides and good reason for being relieved of the percentage limitation, ultimately and unlawfully serves, as it might have here, to make the right to engage in neighborhood canvassing depend on the content of the canvassers' message rather than on the legitimate interest of the community in the character of the canvassers. See *Hynes*, *supra* at 617, 96 S. Ct. 1755; *accord*, *Citizens for a Better Environment* v. *Schaumburg*, 590 F.2d 220 (7th Cir. 1978).

validity, but have not as yet been subject of judicial scrutiny, governing registration of solicitors and dates and times of solicitation, and forbidding solicitation at certain hours or on certain premises.

Further, the ordinance is patently ambiguous in its treatment of salaries, as noted by the court below. Petition for Writ of Certiorari, Appendix A, pp. A-8 - A-9. Surely, the salary of a medical researcher, for example, engaged in carrying out the very objectives for which the charity came into existence, would constitute a program expense, and not in any sense an administrative or fund-raising expense. The ordinance, however, offers no such assurance, and is accordingly, as the court below found, unconstitutionally vague. See also *Carolina Action* v. *Pickard*, 465 F. Supp. 576, 582 (W.D.N.C. 1979). In addition, to assume, as does the Village of Schaumburg, that all "[a]dministrative expenses" are not "used for the charitable purposes of the organization" is to assume that such organizations live on air. Moreover, the ordinance is unclear as to the status of religious charitable organizations, notwithstanding the very strong protection the First Amendment accords "free exercise" of religious belief, and the corresponding restraint the Court has imposed on states and localities attempting to regulate to any degree such religious expression. *Cantwell* v. *Con-*

necticut, 310 U.S. 296 (1940); *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943).

The Court of Appeals questioned the Village's assertion that religious and political organizations are not subject to the ordinance, stating that such an exclusion "seems inconsistent with the broad definition involved" (Petition for Writ of Certiorari, Appendix A, p. A-8, n. 5). Such uncertainty would make the ordinance impermissibly vague. *Hynes* v. *Mayor of Oradell*, 425 U.S. 610 (1976).

Village counsel admits the inclusion of religious organizations under the ordinance would violate the First Amendment [33] (Petition for Writ of Certiorari, Appendix A, p. A-8, n. 5). Despite this admission, at least five states [34] and many localities include religious organizations under statutes that limit expenditures for charitable solicitation. *Cantwell* v. *Connecticut*, 310 U.S. 296, 305 (1940), made clear that regulation of solicitation by religious groups may not "unreasonably obstruct or delay the collection of funds." Under *Cantwell*, a state is free to regulate the time and manner of religious solicitation, as it is with other groups (310 U.S. at 306). It may also require a religious solicitor "to establish his identity and his authority." Statutes like that of the Village of Schaumburg go far beyond the kind of regulation allowed in *Cantwell*. Such statutes probe deeply into church affairs, and seek to dictate the way in which the church may carry its message to the people, thus appearing to violate both the Free Exercise and Establishment Clauses of the First Amendment.

[33] This admission is not binding on the Court. *Torres* v. *Commonwealth of Puerto Rico*, 47 U.S.L.W. 4716, 4718, n.3 (June 18, 1979); *Sibron* v. *New York*, 392 U.S. 40, 58 (1968).

[34] These states are Connecticut, Minnesota, North Carolina, Rhode Island and Virginia. PHILANTHROPY MONTHLY, SURVEY OF STATE LAWS REGULATING CHARITABLE SOLICITATION (Looseleaf, 1978 Rev.). The North Carolina statute has recently been held to violate the First, Fifth and Fourteenth Amendments. *Heritage Village Church* v. *North Carolina*, No. 77CVS6460 (N.C. Ct. App. April 3, 1979). In addition a federal magistrate has recommended that the Minnesota statute be struck down for the same reasons. *Valente* v. *Larson*, Civ. 4-78-453 (D. Minn., 4th Div., May 3, 1979).

The ordinance also requires evidence of compliance with the Illinois state statute regulating solicitation of funds. See Ill. Ann. Stat. Ch. 23, §§ 5101, *et seq.* (Smith-Hurd). The Illinois statute contains annual financial reporting requirements, as do 36 of the 38 statutes of other states and the District of Columbia which regulate charitable solicitation.[35] Disclosure, rather than percentage limitations on fund-raising and administrative costs, has been the preferred solution [36] recommended in studies

[35] While the Illinois statute also requires that 75% of a charity's "gross receipts" be paid out for "charitable purposes," under the statutory definition "gross receipts" are determined only *after* deducting the "reasonable and legitimate" costs incurred in fund-raising activities. Ill. Ann. Stat., Ch. 23, § 5109(c) (Smith-Hurd). The Illinois Appellate Court has cautioned that the proviso permitting deduction of fund-raising costs prior to computing gross receipts, and applying the percentage limitation, must be liberally construed. *People* v. *Police Hall of Fame, Inc.*, 60 Ill. App. 3d 331, 17 Ill. Dec. 519, 376 N.E.2d 665, 673, 674 (Ill. App. Ct., 1st Dist., 1978). Thus the Illinois state statute does not present the same problems that are inherent in the Schaumburg ordinance. Petitioner's reliance (Petitioner's Brief at 31) on the *Police Hall of Fame* case in support of the Schaumburg ordinance is, for that reason, misplaced.

[36] As applied to religious organizations, however, disclosure requirements violate the First Amendment because they entangle the State in church affairs, similar to the tax audits and government investigation of church records prohibited in *Walz* v. *Tax Comm'n of the City of New York*, 397 U.S. 664, 674 (1970); and *Lemon* v. *Kurtzman*, 403 U.S. 602, 620 (1971). In *Lemon*, this Court stated:

> In particular the government's post-audit power to inspect and evaluate a church-related school's financial records and to determine which expenditures are religious and which are secular creates an intimate and continuing relationship between church and state. [403 U.S. at 621-22.]

See *New York* v. *Cathedral Academy*, 434 U.S. 125 (1977); *Lemon* v. *Kurtzman*, 411 U.S. 192 (1973). Disclosure requirements could

of the problem of regulating charitable solicitation [37] and in testimony before congressional committees.[38] If the

---

create an equally "intimate and continuing relationship between church and State," and for that reason such requirements could violate the First and Fourteenth Amendments.

[37] For example, the Commission on Private Philanthropy and Public Needs concluded that the most meaningful method of making charitable organizations accountable to the public would be a requirement for filing of detailed annual reports on their finances, programs and priorities, including statements of income and expenditures. Filer Commission Report, note 5 *supra*, pp. 162-166. Similarly, the National Health Council has emphasized disclosure and reporting requirements as the best means of regulating charitable solicitations, cautioning, however, that uniform reporting and accounting standards should be utilized in place of the confusing welter of requirements currently in force in the various states and localities. National Health Council, VIEWPOINTS: STATE LEGISLATION REGULATING SOLICITATION OF FUNDS FROM THE PUBLIC 2 (1976 Rev. Ed.). In the same connection, the National Health Council has also pointed out the numerous "difficulties inherent in legislating a cost limitation for general application to all charitable solicitations within the state." *Id.* at 5. Further, a report to the Commission on Private Philanthropy and Public Needs on alternative regulatory approaches recommended that "[a]s between a fixed percent limit on the cost of solicitation and the use of disclosure as an indirect means of regulation, we believe that the disadvantages of imposing fixed limitations far outweigh the benefit of protecting the public . . . ." Yarmolinsky & Fremont-Smith, "Judicial Remedies and Related Topics," in V Research Papers Sponsored by The Commission on Private Philanthropy and Public Needs—Regulation 2703 (U.S. Dep't of the Treasury, 1977).

[38] In recent years, bills have been introduced in Congress in an effort to impose uniform nationwide federal standards of accountability on charities. Some bills, like H.R. 1123, 94th Cong., 1st Sess., would have required charities using the mails for solicitation to offer to make available to prospective donees upon request detailed financial information. Other bills, like H.R. 10922, 94th Cong., 2d Sess., would have required charities seeking contributions by mail to accompany the request for donations with a detailed financial statement. Still others, like H.R. 4689 and S. 1153, 93rd Cong., 2d Sess., and H.R. 41, 95th Cong., 1st Sess., would require charities to make annual reports to a federal agency, *e.g.*, the Internal Revenue Service, as well as to each state where solicitations were made. Testimony in hearings on such legislation, by representatives of major charities, has generally supported annual filing requirements, and procedures whereby prospective donors could obtain financial

---

data from the charities upon request. On the other hand, such testimony has generally opposed mandatory point-of-contact dissemination of financial data as unduly cumbersome and burdensome, and has uniformly opposed mandatory fixed ratios of fund raising costs to program costs. For example, in Hearings on H.R. 41, note 19 *supra*, the director of development of Save the Children Federation stated:

> Concerning specific requirements of H.R. 41, we are very pleased that it takes the route of public disclosure. This agency feels that the public should be given the information about a charity's use of its contributed income and should be able to make up its own mind as to the merits of the charitable activities. This approach is far better, in our opinion, than establishing arbitrary fund raising and administration ratios.

Hearings on H.R. 41, *supra*, p. 13 (Statement of Kenneth Phillips). Similarly the President of the American Association of Fund Raising Counsel, Inc., stated:

> We think there should be available to the donor, information on the program of that organization, who are its directors or trustees, what its track record might be and, if you will, a history of its finances, not just that of a given year.
>
> All this in a solicitation letter would not be a practical thing to write but if the letter says that the donor can ask for and receive an annual report from the charity, then the donor could make a more careful judgment on whether the charity should be supported.

Hearings on H.R. 41, *supra*, p. 77 (Statement of John J. Schwartz). Along the same lines, the Senior Vice President of the American Hospital Association testified:

> The purpose of this legislation is to provide the American public with information concerning the expenditure of funds solicited for charitable purposes. In support of this goal, the bill requires freer access to financial data about those organizations that use the mails to obtain donated funds. The American Hospital Association supports this intention, and the goal of full financial disclosure, as enunciated in an official AHA policy document, "The Statement on the Financial Requirements of Health Care Institutions and Services," which serves as a set of guidelines for our member hospitals. In this document, the association states that "health care institutions have an obligation to disclose to the public evidence that all their funds are being effectively utilized in accordance with their stated purpose of operation." Thus, we support disclosure efforts that will protect the American public from dishonest fundraising practices.

[Footnote continued on page 30]

purpose of the Schaumburg ordinance is to protect households and the residents thereof from fraudulent solicitation, that purpose can be accomplished without the percentage limitation provision at issue here.

If the purpose of the ordinance is to assure that prospective contributors are fully informed of the way in which their contributions will be employed, that purpose can be accomplished within the framework of carefully-drafted disclosure legislation. There is a serious question, however, whether local government has sufficient interest in the disposition of funds collected, as distinguished from

---

[38] [Continued]

Hearings on H.R. 41, *supra*, p. 133 (Statement of Leo J. Gehrig, M.D.).

However, as to "point of contact" disclosure, Dr. Gehrig stated:

> The requirement to disclose the percentage of funds collected that is available for expenditure at the point of solicitation will often, in our view, be misleading. An adequate explanation would, in many cases, entail lengthy explanation, adding significantly to the costs of solicitation. It also would lend a negative note to the solicitations, undermining the positive messages which are so important to successful drives. Ironically, this requirement would increase the very expenses that the bill intends to moderate.

Id. at 135.

And as to fixed percentage limits on fund-raising costs, Dr. Gehrig stated:

> The socioeconomic status of the population solicited will determine, in large measure, the percentage of total funds raised that will be required for administration of the fundraising effort. Much of the costs incurred by hospital development offices—salaries, promotional and mailing fees, et cetera—are relatively fixed but, obviously, hospitals located in more affluent communities raise, on an average, a larger amount per contact than those in less economically advantaged areas. Fundraising costs as a percentage of total funds raised depend on the wealth of the population solicited. Variations in the ratios of fundraising costs to total funds received, therefore, are not measures of efficiency and may inhibit fundraising, particularly in less affluent locales.

Id. at 134-5.

the method of collection, so as to outweigh the inhibiting effect of patchwork regulation on national organizations.

But if, as the court below concluded, the purpose of the ordinance is simply to bar altogether organizations that choose or are compelled to spend 25 percent of the proceeds of solicitations on their administrative costs then, for all the reasons stated above, the ordinance is unconstitutional on its face.

CONCLUSION

Accordingly, the judgment of the courts below should be affirmed.

Respectfully submitted,

ADAM YARMOLINSKY
STEPHEN T. OWEN
1776 F Street, N.W.
Washington, D.C. 20006
202-467-5900

Attorneys for the Amici Curiae

Of Counsel:

KOMINERS, FORT, SCHLEFER & BOYER
1776 F Street, N.W.
Washington, D.C. 20006

July 1979

Appendices

APPENDIX A

States (and the District of Columbia) which have adopted legislation regulating charitable solicitation, with citation of the pertinent provisions, are as follows:

Arkansas: Arkansas Stat. Ann. Sec. 64-1601, *et seq.* (1959)

California: Cal. Bus. & Prof. Code Sec. 17510, *et seq.* (1972), Cal. Government Code Sec. 12580, *et seq.* (1959)

Colorado: Col. Rev. Statutes Sec. 18-5-115 (1975)

Connecticut: Conn. Gen. Stat. Sec. 17-21e, *et seq.* (1963, amended 1976)

District of Columbia: D.C. Code Sec. 2-2101, *et seq.* (1957) (D.C. Charitable Solicitation Act)

Florida: Florida Statutes Chapter 496 (1974) (Solicitation of Charitable Funds Act)

Georgia: Solicitation Statute—Ga. Code Annotated Sec. 35-1001, *et seq.* (1963); Charitable Trust Statute—Sec. 108-217, *et seq.* (Georgia Charitable Trust Act)

Hawaii: Chapter 467B of Hawaii Revised Statutes (1971)

Idaho: Idaho Code Sec. 67-1401 (1972)

Illinois: Solicitation Statute—Illinois Annotated Statutes Sec. 23-5101 (1974), *et seq.*, Charitable Trust Statute—Sec. 14-51, *et seq.* (Uniform Supervision of Trustees for Charitable Purposes Act)

Iowa: Iowa Code Annotated Sec. 122.1, *et seq.* (1967)

Kansas: Kansas Statutes Annotated Sec. 17-1739, *et seq.* (1974)

Kentucky: Kentucky Revised Statutes Sec. 196.250 (1974), Section 367.510 to 367.540, and Section 367.650 and 367.670 (June 17, 1976)

Maine: Maine Revised Statutes Annotated Sec. 5001, *et seq.* (Effective January 1, 1978)

Maryland: Annotated Code of Maryland Sec. 41-103, *et seq.* (1976)

Massachusetts: Annotated Laws of Mass. Sec. 68-18, *et seq.* (1964)

Michigan: Michigan Compiled Laws Annotated Sec. 400.271, *et seq.* (1975)

Minnesota: Minnesota Statutes Annotated Sec. 309.50, *et seq.* (1973, amended 1978)

Nebraska: Revised Statutes of Nebraska Sec. 28-1401 (1969)

Nevada: Nevada Revised Statutes Sec. 86.190 (1943)

New Hampshire: N.H. Revised Statutes Annotated Sec. 320.1, *et seq.* (1931) and 31.91 (1965)

New Jersey: New Jersey Statutes Annotated Chapter 45-17A, *et seq.* (1971)

New York: McKinney's Consolidated Laws of New York Annotated Solicitation Statute—Article 7-A of the Executive Law (Chapter 669) (1977)

North Carolina: N.C. General Statutes Sec. 108-75.1, *et seq.* (1975)

North Dakota: North Dakota Century Code Chapter 50-22 (1961, amended 1975)

Ohio: Page's Ohio Revised Code Annotated Sec. 1716.01, *et seq.* (1955)

Oklahoma: Oklahoma Statutes Annotated Sec. 18-552.1, *et seq.* (1978) (Solicitations of Charitable Contributions Act)

Oregon: Oregon Revised Statutes Sec. 128.610 to 128-.750, 128.805 to 128.990

Pennsylvania: Purdon's Pennsylvania Statutes Annoted Sec. 10-160-1 (1974) (Solicitation of Charitable Funds Act)

Rhode Island: General Laws of Rhode Island Sec. 5-53-1, *et seq.* (1976)

South Carolina: Code of Laws of S.C. Sec. 67-91, *et seq.* (1972)

South Dakota: South Dakota Compiled Laws Sec. 37-27-1, *et seq.* (1975)

Tennessee: Tennessee Code Annotated Sec. 48-2201, *et seq.* (1977)

Texas: Vernon's Texas Civil Statutes Sec. 1396-1.01, *et seq.* (effective January 1, 1978)

Utah: Utah Code Annotated Sec. 76-10-601 (1973) (Criminal Code)

Virginia: Code of Virginia Sec. 57-48, *et seq.* (1975) Eff. date—July 1, 1976 (Initial Registration not due until July 1978)

Washington: Revised Code of Washington Annotated Solicitation Statute—Sec. 19.09, *et seq.* Charitable Trust Statute—Sec. 19.10, *et seq.*

West Virginia: West Virginia Code Sec. 29-19-1, *et seq.* (1977)

Wisconsin: West's Wisconsin Statutes Annotated Sec. 440.41, *et seq.* (1961)

[SOURCE: THE PHILANTHROPY MONTHLY, SURVEY OF STATE LAWS REGULATING CHARITABLE SOLICITATION (Looseleaf, 1978 Rev.)]

APPENDIX B

[Report of the Mental Health Association of Greater Chicago—June 1979]

ORDINANCES WHICH CAUSE BARRIERS IN BELL RINGER CAMPAIGN IN THE GREATER CHICAGO AREA

BARRINGTON

The Board of Trustees, Village of Barrington, has been denying the Association permission in bell ringer according to our records since 1972. The Village of Barrington recommends that the Association join the Barrington area United Fund. When a letter from the Association Board member who is an attorney was written requesting on what grounds permission was denied, the letter was never answered.

Unofficially, the Association was told that while the Association would never receive permission from the Barrington Village Board to conduct a drive there would be no effort to stop our volunteers from soliciting. Thus, depite denial, the Association continued to recruit members until 1974. However, the denial seemed to have effect as it became more difficult to recruit and those recruiters dropped out at a higher rate than elsewhere. Since 1975, we have not done a bell ringer in Barrington.

ELK GROVE VILLAGE

No legal objection, but requires all solicitors to register and obtain a solicitor's permit between 8:30 a.m. and 5:00 p.m. at the Elk Grove Village office.

Through 1977 we were allowed to send in the names and addresses and obtain the permits which we then enclosed in each kit.

As of 1978, it was required that each individual appear in person and be finger printed. Since then, we have not conducted a drive in Elk Grove Village.

ROLLING MEADOWS

In this community, a tax is levied for mental health services. In view of this, permission to collect has been denied us since 1973.

HOFFMAN ESTATES

Until 1966 the bill ringer campaign was successfully conducted in Hoffman Estates. At the time a local agency, the Northwest Cooperative Mental Health Clinic, was given permission to solicit in the area and our request was denied.

In 1973, permission was again granted, but each marcher was required to wear a special tag. Due to the additional problems caused by the necessity of these tags and their display, we stopped conducting the campaign in 1975.

LA GRANGE

In 1973, the Village Board denied permission to the Association to collect in La Grange. Their rationale consisted of trying to screen out agencies not based in the village.

RIVER GROVE

An ordinance requiring a permit and special tags for bell ringers was enacted in 1978. A permit application along with the list of marcher was to be sent over four weeks in advance of the campaign. We did not apply for the permit in 1978 or 1979.

SCHILLER PARK

An ordinance passed in 1970 requiring registration and finger-printing of solicitors has made it most difficult to engage members. This suburb was removed from our campaign list after 1977.

SCHAUMBURG

Ordinance #1052, Chapter 22, required a permit to solicit and allows the Village Board to set aside special days for collection. One day does not allow for sufficient collection to make our efforts worthwhile. The campaign was discontinued after 1976.

WHEELING

Wheeling-Buffalo Grove has an anti-solicitation ordinance. In the past we received money through the United Fund drive. The Fund did not contribute to us after 1966.

HOMEWOOD

Homewood's Solicitation Ordinance allow only 35 canvassers who are registered and restricts hours of collection to between 9:00 a.m. and 7:30 p.m. The last year we campaigned in this suburb was 1975.

BROOKFIELD

Permission to solicit has been denied by the Village Board since 1973. They feel there would be too many organizations canvassing and oppose such solicitation.

FRANKLIN PARK

The Board of Trustees has granted permission to conduct the campaign if the canvassers are registered and special tags are worn. Our cost for 1978 in Franklin Park was 60% of the money collected. In 1979 we discontinued the campaign in this suburb.

SUMMARY

County	Suburbs	Restrictions	Final Year of Solicitation
Lake	Barrington	Permission denied —1974	1975
North Suburbs			
Cook	Elk Grove Village	Registration and Finger-printed (each marcher)	1977
	Rolling Meadows	Permission denied	1974
	Schaumburg	Special day	1976
	Wheeling	Permission denied	1976
South Suburbs			
Cook	Homewood	Registration	1975
West Suburbs			
Cook	Brookfield	Permission denied	1977
	Franklin Park	Special badges	1977
	Hoffman Estates	Special tags	1975
	LaGrange	Permission denied	1973
	River Grove	Special tags	1978
	Schiller Park	Ordinance—finger prints	1977